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Supreme Court of the United States

OCTOBER TERM, 1957.

No. 209

MOORE-McCORMACK LINES, INC., as charterer in possession of steamship *WILLIAM S. HALSTED*,

Petitioner,

against

Tank Steamship *ESSO CAMDEN*, STANDARD OIL COMPANY (N. J.),

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR RESPONDENT IN OPPOSITION.

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QUESTION PRESENTED.

Where a time charter of a vessel was entered into between its owner and a subsidiary corporation, can damages for loss of use of said vessel be measured on the basis of the rate of hire provided for in said charter?

STATEMENT.

At the time of the collision, the tank vessel *Esso Camden* was under time charter from its owner and operator to a subsidiary corporation for the carriage of petroleum

products owned by the subsidiary (10a-11a). This time charter provided for charter hire to be paid in advance and to be refixed monthly according to an agreed formula (11a-12a). It further provided that in the event of loss of time for various reasons, including collision, payment of hire was to cease until the vessel was able to resume service. Consequently when the *Esso Camden* collided with the *William S. Halsted*, the *Esso Camden* was forced out of service in order to effect repairs and the earning of hire ceased, resulting in a pecuniary loss to the owner.

The special commissioner appointed to ascertain and compute damages found that this loss of hire was the proper measure of the owner's damages for loss of use of the *Esso Camden*. After hearing the testimony of the witnesses in connection with the execution and performance of the time charter, he said (75a):

> ". . . I am satisfied that no reason exists why the two companies were incapable of making a valid contract with each other. I hold as a matter of law that they were and that the charter on the *Esso Camden* was a valid contract of charter and that the hire provided for in the contract is evidence of the value of the ship's time."

Upon review, the District Court sustained the above finding of the Commissioner when it said (91a):

> "The Commissioner found that libellant's assertion that the subsidiary was incapable of dealing freely with its parent, was not proven. Accordingly he based detention damages upon the contract between them. This finding is sustained by the record. The two witnesses who testified on this issue admitted that claimant exercised control over broad policy matters affecting the development and exploitation of the holdings of its subsidiaries but

> they maintained that, in the execution of these broad policies, the subsidiaries and affiliates dealt independently with each other and with claimant."

Upon further review, the Court of Appeals affirmed the District Court's finding with respect to the proper measure of the owner's damages for loss of use of the *Esso Camden* and said (118a-119a):

> "The *Halsted* claims that because the charter party was entered into between parent and subsidiary the charter party rate was not a proper yardstick to be used to measure the *Camden's* detention damages and the owner should be made to prove the cost of hiring substitute vessels. We do not agree. The charter party rate constituted appropriate evidence from which to measure damages. See *The Conqueror*, *supra*, at 133. There is no evidence that the parent overreached the subsidiary in setting the rate of hire in the charter party, which was manifestly fair, being in accord with or lower than the current market. Accordingly, we affirm the district court's consideration of the charter party rate as proper and persuasive evidence for measuring the *Camden's* detention damages" (see also Appendix to Petition, p. 14).

Reasons for Denying the Writ.

1. The issue in the present case is uniquely narrow. It turns solely upon an analysis of the facts peculiar to this case in the light of well established principles of law as to the validity of transactions between affiliated corporations. Petitioner does not allege a conflict between the decision in the present case, with respect to the validity of the contract of time charter between the parent and subsidiary corporation, and the decisions in other cases involving

contracts between affiliated corporations. Consequently, petitioner implicitly recognizes that the present case has not upset the uniformity of decisions on the point. Instead, petitioner requests this Court to review the Commissioner's findings of fact supporting the pecuniary loss to the shipowner under the time charter, which findings have already been reviewed and affirmed by the District Court and by the Court of Appeals. We submit that a factual issue does not warrant review by this Court.

2. The sole reason that petitioner offers for granting the writ is that the present case conflicts with the principle established by this Court in *The Conqueror*, 166 U. S. 110 and *Brooklyn Eastern District Terminal* v. *United States*, 287 U. S. 170. These decisions and others of the various Courts of Appeals cited by petitioner uniformly hold that to recover damages for loss of use of a vessel there must be at least a reasonable certainty of pecuniary loss. Each cited case was decided on its own peculiar facts. None of the cases cited involved loss of use of a vessel which, but for the collision, would have been earning hire pursuant to an existing charter. It is well recognized that charter rates furnish the best measure of damages for loss of use of a vessel. *Aquilino's, Inc.* v. *Eagle Oil & Shipping Company*, 2 Cir., 133 F. 2d 869, cert. den. 328 U. S. 835; *M. & J. Tracy, Inc.* v. *The Beacon Card*, EDNY, 116 F. Supp. 516, 518. Furthermore, the Court of Appeals in the present case, in support of the charter party rate as the proper measure of the damages for loss of use of the *Esso Camden*, relied upon *The Conqueror*, *supra*, at page 133 where this Court said:

> "In all the cases in which we have allowed demurrage the vessel has been engaged, or was capable of being engaged, in a profitable commerce, and the

amount allowed was determined either by the charter value of such vessel, or by her actual earnings at about the time of the collision."

3. It must also be borne in mind that the record contains uncontradicted evidence that during the lay-up of the *Esso Camden*, the requirements of the charterer were not satisfied by the owner's fleet of vessels. Consequently, it became necessary for the charterer to charter additional vessels of the general size and class of the *Esso Camden*, one of which vessels was a substitute for the *Esso Camden*.

Although we agree with the decision of the Court of Appeals that the rate of hire contained in the time charter was the proper measure of the owner's loss of use of the *Esso Camden*, we submit that the Court of Appeals could have found a pecuniary loss to the owner of the *Esso Camden* on the basis of the cost of hiring the substituted vessel. This alternative method of computing damages for loss of use is supported by petitioner's argument that the charterer was nothing more than "a division or department of a single integrated organization." If we follow this argument to its logical conclusion, the cost of hiring the substituted vessel would not be an expense to the charterer but rather an expense to the owner of the *Esso Camden* as a "single integrated organization." Consequently, petitioner is not aggrieved by the decision of the Court of Appeals since that Court, on the record before it, could have found a pecuniary loss to the owner of the *Esso Camden* on another ground.

Petitioner offers no worthwhile reason for the granting of this petition. He has not shown any conflict of opinion nor has he shown that the issue is of any importance to warrant review by this Court. In *Maryland Co. v. Cuba*, 262 U. S. 159, 163, this Court said:

"The jurisdiction to bring up cases by certiorari from the Circuit Courts of Appeals was given for two purposes, first to secure uniformity of decision between those Courts in the nine circuits, and second, to bring up cases involving questions of importance which it is in the public interest to have decided by this Court of last resort. *The jurisdiction was not conferred upon this Court merely to give the defeated party in the Circuit Court of Appeals another hearing.*"*

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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STEPHEN J. BUCKLEY,
IRA A. CAMPBELL,
of Counsel.

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* Italics ours.